



Civil Resolution Tribunal

Date Issued: July 28, 2023

File: SC-2022-007620

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ethier v. Prince of Whales Holding Ltd.*, 2023 BCCRT 637

BETWEEN:

ERIC R ETHIER

APPLICANT

AND:

PRINCE OF WHALES HOLDINGS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about property damage. The applicant, Eric R Ethier, says *Ocean Magic*, a vessel owned and operated by the respondent, Prince of Whales Holdings Ltd. (Prince of Whales), improperly overtook his boat, causing a large wake which knocked his barbeque and an inflatable fender off the boat. Mr. Ethier seeks \$600 as compensation to replace those items.

2. Prince of Whales denies it had a vessel in the area at that time, and further says Mr. Ethier failed to properly secure his items.
3. Mr. Ethier represents himself. Prince of Whales is represented by an authorized employee.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. Section 39 of the CRTA says that the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties in this dispute call into question the credibility, or truthfulness, of the other. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. Section 42 of the CRTA says that the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted by section 118 of the CRTA, in resolving this dispute, the CRT may order a party to do or stop doing something, pay money, or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUE

8. The issue in this dispute is whether Prince of Whales owes Mr. Ethier \$600 for the claimed damaged or lost items.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Mr. Ethier must prove his claim on a balance of probabilities (meaning “more likely than not”). While I have read all of the parties’ submitted evidence and arguments, I have only addressed those necessary to explain my decision. I note Prince of Whales chose not to provide any written arguments, despite the opportunity to do so.
10. On August 23, 2022, Mr. Ethier says he was transiting an area of inland waterways off the coast of Victoria, British Columbia. In its Dispute Response filed at the outset of this proceeding, Prince of Whales argued its *Ocean Magic* vessel was not in the area at the time Mr. Ethier alleges his property was damaged, and argued it was not speeding. However, as noted, Prince of Whales chose not to provide any written submissions in this dispute. It did provide a logbook, but the logbook is dated September 23, 2022, not August 23. So, I find it is of no assistance in determining *Ocean Magic*’s location or speed on the incident date.
11. Mr. Ethier says that as he was transiting, *Ocean Magic* overtook his vessel from behind on his starboard side at a close proximity. He says the wake created hit his vessel with enough force to knock him off course and pitched his barbeque and a fender overboard.
12. Given Prince of Whales did not provide any written submissions about the incident apart from saying its vessel was not in the area, I accept Mr. Ethier’s version of what happened. I say this because I would have expected Prince of Whales to be able to provide some evidence of where its vessel was, if not where Mr. Ethier alleges. In other words, I accept that *Ocean Magic* overtook Mr. Ethier’s vessel at a close proximity and the wake caused his property to be knocked overboard.

13. The federal *Marine Liability Act* applies to this dispute. The *Marine Liability Act* says that the standard of care in negligence cases in maritime law is that of a competent seaperson in the surrounding circumstances, not an ordinary person (see: *Ordon Estate v. Grail*, 1998 CanLII 771 (SCC) and *Isen v. Simms*, 2006 SCC 41 at paragraphs 23 to 25). Otherwise, the basic principles of negligence are still the same. In particular, Mr. Ethier must prove that Prince of Whales owed him a duty of care, that it breached the applicable standard of care, and that the breach caused the claimed damage, which was foreseeable.
14. It is undisputed Prince of Whales owed other vessels using the waterway, including Mr. Ethier's, a duty of care. It is also undisputed that Mr. Ethier's barbeque and fender were lost or damaged, and I find it was a result of Prince of Whales' vessel's wake, as discussed above. So, the question is whether Prince of Whales breached the applicable standard of care when overtaking Mr. Ethier's boat. I find it did.
15. Mr. Ethier says Prince of Whales breached the Canadian *Collision Regulations*, which are regulations to the *Canada Shipping Act*. I note section 6 of the *Canada Shipping Act* indicates one of its objectives is to promote safety in marine transportation and recreational boating. So, I find the *Canada Shipping Act* and the *Collision Regulations* apply to this situation. Rule 6(c), Safe Speed – Canadian Modifications, of Schedule 1 of the *Collision Regulations*, states that in Canadian inland waterways, every vessel passing another vessel shall proceed with caution at a speed that will not adversely affect the vessel being passed.
16. As I accept Mr. Ethier's version of events, I find Prince of Whales' *Ocean Magic* overtook Mr. Ethier's boat in a way that adversely affected Mr. Ethier, and caused his property damage. I find Prince of Whales' actions fell below that of a competent seaperson. Therefore, I find Prince of Whales is responsible for Mr. Ethier's proven damages.
17. As noted, Mr. Ethier claims \$600 for a new barbeque and replacement fender. However, he only provided an August 24, 2022 receipt for a barbeque and scrub

brush, totaling \$480.46. Mr. Ethier did not provide any receipt or valuation of the lost fender. I find Prince of Whales must reimburse Mr. Ethier the proven \$480.46.

18. Mr. Ethier is also entitled to pre-judgment interest under the *Court Order Interest Act*. Calculated from August 24, 2022 to today's date, that totals \$15.36.
19. Under section 49 of the CRTA, and the CRT rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. As Mr. Ethier was mostly successful, I find Prince of Whales must reimburse him \$125 in tribunal fees. He did not claim any dispute-related expenses.

ORDERS

20. Within 30 days of the date of this decision, I order Prince of Whales to pay Mr. Ethier a total of \$620.82, broken down as follows:
 - a. \$480.46 in damages,
 - b. \$15.36 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$125 in tribunal fees.
21. Mr. Ethier is also entitled to post-judgment interest, as applicable.
22. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Andrea Ritchie, Vice Chair

